UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

BLUE MACELLARI,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 05-4161-JPG
	)	
RUSTY CARROLL, R2C2, INC., and DIGITALSMITH CORPORATION,	)	
	)	
	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Introduction

Plaintiff has filed an eleven-count complaint against Rusty Carroll and R2C2, Inc. Plaintiff alleges that her "South Africa Manuscript" had been made available on Defendants' websites without her consent. Plaintiff alleges that she "owns the copyright to the South Africa Manuscript" and that she has "filed to register the South Africa Manuscript with the United States Copyright Office." (¶¶ 29-30).

The Complaint is deficient in several material respects. It should be dismissed for the following reasons:

- Plaintiff's copyright infringement claims (Counts I-III) are barred because Plaintiff has not obtained a registration for her purported copyright. As such, this Court lacks jurisdiction over any claims for copyright infringement.

- Plaintiff's Lanham Act claims (Counts VI-VII) fail because Plaintiff and Defendants are not competitors.

- The false designation of origin Lanham Act claim (Count VI) fails for the additional reason that Plaintiff's precise theory was squarely rejected by the Supreme Court in Dastar Corp. v. Twentieth Century Fox Film Corp., 539 U.S. 23 (2003).

- Plaintiff's state law claims are barred under the Communications Decency Act, 47 U.S.C. § 230.

- Plaintiff's claim under the Illinois Consumer Fraud and Deceptive Business Practices Act (Count VIII) fails because Plaintiff cannot allege that she is a consumer of Defendants' services.

- Plaintiff's defamation and false light claims (Counts IX-X) fail to allege essential elements of their cause of action and are preempted by the Copyright Act.

- Finally, Plaintiff's claim for unjust enrichment is preempted by the Copyright Act.

Discussion

I. The Court Lacks Jurisdiction Over Plaintiff's Copyright Infringement Counts.

Counts I-III allege copyright infringement. However, § 411(a) of the Copyright Act states that "no action for infringement of the copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made in accordance with this title." 17 U.S.C. § 411(a). With certain limited exceptions not applicable here, "registration is a jurisdictional prerequisite to the initiation of an infringement action in federal court." Marshall & Swift v. BS & A Software, 871 F. Supp. 952, 958 (W.D. Mich. 1994). As such, Counts I-III should be dismissed under Rule 12(b)(1) for lack of jurisdiction.

The cases dismissing actions under these circumstances are legion. See, e.g., Murray Hill Publications, Inc. v. ABC Commc'ns, Inc., 264 F.3d 622 (6th Cir. 2001); M.G.B. Homes, Inc. v. Ameron Homes, Inc., 903 F.2d 1486 (11th Cir. 1990); Country Road Music, Inc. v. MP3.com, Inc., 279 F. Supp. 2d 325 (S.D.N.Y. 2003); Morgan, Inc. v. White Rock Distilleries, Inc., 230 F. Supp. 2d 104 (D. Me. 2002); Haan Crafts Corp. v. Craft Masters, Inc., 683 F. Supp. 1234 (N.D. Ind. 1988).

Plaintiff's allegation is that she filed in July 2005 to register her alleged copyright in the South Africa Manuscript (¶ 30). Thus, she has failed to allege that she has obtained a

registration, meaning that the case should be dismissed under 17 U.S.C. § 411(a). Jurisdiction does not exist because Plaintiff does not have a certificate of registration. See Loree Rodkin Mgmt. Corp. v. Ross-Simons, Inc., 315 F. Supp. 2d 1053, 1054-55 (C.D. Cal. 2004) (no standing to bring copyright infringement suit while application for copyright registration pending before Copyright Office).

II. Plaintiff's Lanham Act Claims Fail Because the Parties Are Not Competitors.

Counts VI and VII allege false designation of origin and false advertising under § 43(a) of the Lanham Act. However, § 43(a) of the Lanham Act, 15 U.S.C. § 1125, is designed to protect against competitive injury. See L.S. Heath & Son, Inc. v. AT&T Info. Sys., Inc., 9 F.3d 561, 575 (7th Cir. 1993), citing, Waits v. Frito-Lay, Inc., 978 F.2d 1093, 1109 (9th Cir. 1992); see also Conte Bros. Automotive, Inc. v. Quaker State-Slick 50, Inc., 165 F.3d 221 (3d Cir. 1998). There is no allegation whatsoever that Plaintiff is a competitor or has suffered any type of competitive injury. Her Lanham Act claims therefore should be dismissed.

Plaintiff alleges that Defendants' actions "is likely to cause, and has caused, damage, including consumer confusion" and "have caused [Plaintiff], as well as members of the public, confusion and damages, including economic and non-economic damages" (¶¶ 105, 107). Plaintiff, however, is a student (¶¶ 16-17), and it is difficult to imagine how Plaintiff herself could have been confused as to the origin of what she alleges is her own manuscript. She does not operate "term paper-related services" (¶ 102) as she describes Defendants' business. In fact, there is no allegation that she is engaged in any commercial enterprise whatsoever. Plaintiff is simply not a competitor and cannot allege any form of competitive injury.

The Seventh Circuit has squarely held that non-competitors do not have standing to sue under the Lanham Act. In L.S. Heath & Son, AT&T featured a manufacturer of chocolate

products, who had purchased an AT&T computer system, in its advertising campaign. After the chocolatier experienced problems with the computer system, it alleged, among other things, that representations made in the advertising campaign about the system it purchased constituted false advertising in violation of the Lanham Act. The Seventh Circuit held that because the chocolatier was not in the computer business, and thus not a competitor of AT&T, it did not have standing to raise the false advertising claim. See L.S. Heath & Son, 9 F.3d at 575.

Here, Plaintiff does not allege she is a competitor of Defendants or that she has suffered any competitive injury. Nor could she. Plaintiff is a student who merely asserts that her as-yet-unregistered and alleged copyright was violated. Plaintiff has no standing to assert a Lanham Act violation and Counts VI and VII should be dismissed.

III. Plaintiff's False Designation of Origin Claim Fails under the Rule of *Dastar*.

Count VI claims that Defendants "have placed copyright notices on the South Africa Manuscript, falsely representing ownership of the copyright" and "have falsely designated the origin of the South Africa Manuscript" (¶¶ 96, 98). The Supreme Court has specifically held that this precise allegation does not state a claim under the Lanham Act.

In Dastar Corp. v. Twentieth Century Fox Film Corp., 539 U.S. 23 (2003), the defendant Dastar released a video set made from tapes of the original version of the Crusade television series. Plaintiff Fox, who had the rights to the television series, but had let the copyright expire, brought suit under § 43(a) of the Lanham Act for false designation of origin or "reverse passing off." The Court framed the issue as follows:

> "If 'origin' refers only to the manufacturer or producer of the physical 'goods' that are made available to the public (in this case the videotapes), Dastar was the origin. If, however, 'origin' includes the creator of the underlying work that Dastar copied, then someone else (perhaps Fox) was the origin of Dastar's product." Id. at 31.

The Court held that "the most natural understanding of the 'origin' of 'goods' – the source of wares – is the producer of the tangible product sold in the marketplace" and that "the phrase 'origin of goods' is in our view incapable of connoting the person or entity that originated the ideas or communications that 'goods' embody or contain." Id. at 32. Accordingly, the Court held that a false designation of origin claim could not be predicated on the authorship "of any idea, concept, or communication embodied in those goods." Id. at 37.

This case is no different. Plaintiff's false designation of origin claim is limited to the origin of the "ideas or communications" that the South Africa Manuscript embodies or contains. It is coextensive with Plaintiff's premature copyright claim. Under the rule of Dastar, Count VI must be dismissed.

IV. **Plaintiff's State Law Claims Are Barred Under 47 U.S.C. § 230.**

All of Plaintiff's state law claims (Counts VIII – IX) assert liability based upon Defendants' alleged publication of the South Africa Manuscript. The Communications Decency Act, 47 U.S.C. § 230, however, immunizes providers of interactive computer services, such as Defendants' websites, from any state law claims based on information content provided by another. Because Plaintiff alleges in her Complaint that the South Africa Manuscript was submitted by someone else (¶¶ 41, 42, 46), Plaintiff's state law claims must fail.

The Communications Decency Act provides that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." § 230(c)(1). The Act also states that "[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." § 230(e)(3). In short, "§ 230 creates a federal immunity to any cause of action that would make service providers liable for information originating with a third-

party user of the service." Zeran v. America Online, Inc., 129 F.3d 327, 330 (4th Cir. 1997) (AOL immune from liability for allegedly defamatory message on AOL bulletin board); see also Ben Ezra, Weinstein & Co. v. American Online, Inc., 206 F.3d 980 (10th Cir. 2000) (AOL immune from state law defamation and negligence claims based on publishing of incorrect stock price and share volume information obtained from another); Carafano v. Metrosplash.com, Inc., 339 F.3d 1119 (9th Cir. 2003) (internet dating service provider immune from state law defamation and invasion of privacy claims based on third party's submission of false profile of plaintiff).

Defendants obtained the South Africa Manuscript from a third party who represented that it was her own work and did not violate the copyrights of anyone else – exactly what Plaintiff alleges to be true (¶¶ 41, 42, 46). Because the South Africa Manuscript was submitted by another "information content provider," Defendants – who are providers of an interactive computer service – did not publish within the meaning of § 230 and are immune from any state law liability based upon the alleged publication of the Manuscript. Counts VIII – XI must be dismissed.

V. Plaintiff Lacks Standing under the Illinois Consumer Fraud Act.

Count VIII of Plaintiff's complaint contains the amorphous allegation that Defendants "have engaged in unfair and/or deceptive business practices" in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (¶ 108-114). Plaintiff, however, has not alleged any pecuniary loss. Nor could she. Plaintiff was not deceived and was not a consumer of Defendants' services. More fundamentally, Plaintiff has no standing under the Consumer Fraud Act because she is neither a consumer nor a competitor alleging any conduct that implicates consumer protection concerns. As such, Count VIII should be dismissed.

"The Consumer Fraud Act protects consumers who purchase merchandise or home improvement services for their own use." Barille v. Sears Roebuck & Co., 682 N.E.2d 118, 124 (Ill. App. 1997). The Act defines a "consumer" as "any person who purchases or contracts for the purchase of merchandise not for resale in the ordinary course of his trade or business but for his use or that of a member of his household." 815 ILCS 505/1(e). Plaintiff is not a consumer. She does not allege that she purchased her own term paper. Nor does she allege that she contracted for its purchase. In fact, she expressly alleges she was not a customer (¶¶ 42, 115-120).

Because Plaintiff was not a consumer, was not deceived, and did not purchase her own term paper, she has suffered no loss. To sue under the Act, Plaintiff must either show a pecuniary loss or "in a case in which the plaintiff cannot show any pecuniary loss but only an emotional injury, [she must show] a *serious* degree of distress caused by *outrageous* and not merely unlawful behavior by the defendant." Greisz v. Household Bank, N.A., 176 F.3d 1012, 1016 (7th Cir. 1999). Plaintiff has not alleged either a pecuniary loss or a "serious degree of distress caused by outrageous and not merely unlawful behavior by the defendant." Plaintiff has failed to state a claim under the Consumer Fraud Act.

In addition, Plaintiff has no standing to sue under the Act. To have standing, a plaintiff generally must be a consumer. See, e.g., Steinberg v. Chicago Medical Sch., 371 N.E.2d 634, 638 (Ill. 1977) (Act "inapplicable" because plaintiff medical school applicant was not consumer); Norton v. City of Chicago, 642 N.E.2d 839, 841 (Ill. App. 1st Dist. 1994) (holding that citizen parking violators lacked "standing to bring an action alleging a violation of the Consumer Fraud Act because they are not consumers"); Mann v. Kemper Fin. Cos., 618

N.E.2d 317, 326 (Ill. App. 1st Dist. 1992) (only individuals who purchased interest in fund had standing under the Act).

In limited circumstances, this standing requirement has been extended to business persons engaged in trade or commerce. See Barille, 682 N.E.2d at 124. "Nevertheless, this liberal interpretation and application of the Act were not intended to cover all commercial transactions regardless of the relationship between the parties involved." Id. Instead, this narrow exception to consumer standing under the Act has been limited to "business competitors [suing] to redress competitive injuries they suffer as a result of deceptive practices by other businesses." Champion Parts, Inc. v. Oppenheimer & Co., 878 F.2d 1003, 1009 (7th Cir. 1989). To promote the underlying consumer protection purpose of the Act, the competitor standing exception is further limited to "practices of the defendant [that] are of the type which *affect* consumers generally." Id.

For example, in Champion Parts, the Seventh Circuit held that Champion could not maintain an action under the Act because it did not compete with the defendant:

> "Champion could not have suffered a competitive injury as a result of the deceptive practices because it was *not* a competitor of Oppenheimer with regard to the market that was affected by Oppenheimer's deceptive practices, *i.e.*, the stock market. It would make no sense to permit a non-competitor to sue for damages under a theory of competitive injury and we do not believe Illinois has done so." Id.

Similarly, in Barille, the Illinois Court of appeals held that an insurance agent could not sue the insurer under the Act because she was not a consumer and had not alleged that the insurer's actions affected competition. 682 N.E.2d at 124.

Here, Plaintiff is neither a consumer nor a competitor alleging competitive injury that implicates consumer protection concerns. The Consumer Fraud Act was simply not designed for this grievance. Count VIII must be dismissed for lack of standing.

VI. Plaintiff Fails to State a Claim for Defamation.

In Count IX, Plaintiff alleges that Defendant "published express and implied false statements" about her, which she alleged constitutes defamation (¶¶ 115-120). A careful reading of her complaint, however, reveals that Plaintiff does not point to a single statement actually made by Defendants that she alleges is false (¶ 41). Instead, Plaintiff asserts nothing more than wild and rampant speculation that "many express and implied statements arise from the use of the South Africa Manuscript" (¶ 42). In other words, Plaintiff alleges that the purported infringement of her as-yet-unregistered and alleged copyright by Defendants also constitutes defamation. This claim fails because (a) it is squarely preempted by the Copyright Act; (b) fails to plead special damages; and (c) Defendants made no statement about Plaintiff.

A. Plaintiff's Defamation Claim Is Preempted by the Copyright Act.

The entire basis for Plaintiff's defamation claim is "the use of the South Africa Manuscript" (¶ 42). The use of the allegedly copyrighted manuscript, however, is the subject of federal copyright law. Because Plaintiff's defamation claim is coextensive with her copyright claim, the defamation claim is preempted by the Copyright Act and must be dismissed.

Section 301(a) of the Copyright Act preempts all "legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 in works of authorship that are fixed in a tangible medium and come within the subject matter of copyright as specified by sections 102 and 103." 17 U.S.C. § 301(a). "Put differently, to avoid preemption, a state law must regulate conduct that is qualitatively distinguishable from that governed by federal copyright law – i.e., conduct other than reproduction, adaptation, publication, performance, and display." Toney v. L'Oreal USA, Inc., 406 F.3d 905, 909, 910 (7th Cir. 2005) (performing two step analysis required under § 301).

There is no question that the South Africa Manuscript is a work "fixed in a tangible form." Id. at 909. Plaintiff admits as much when she alleges that she is entitled to a copyright. The second part of the preemption analysis "requires a showing that the right to be enforced is 'equivalent' to any of the rights set forth in § 106" of the Copyright Act. Id. Because Plaintiff's defamation action is premised on the "use" of the South Africa Manuscript, it falls squarely within the rights set forth in § 106 – namely, "reproduction, adaptation, publication, performance, and display." Id. at 910. Plaintiff's defamation action – because it is based solely on Defendants' alleged "use" of the manuscript – is preempted.

B. Plaintiff Failed to Plead Special Damages.

Because the alleged defamation is not defamation *per se*, Plaintiff is required to plead special damages. Federal Rule 9(g) requires that "[w]hen items of special damage are claimed, they shall be specifically stated." Plaintiff failed to do so, and her Complaint must be dismissed.

Two types of defamatory statements are actionable under Illinois law – defamation *per se* and defamation *per quod*. Statements are defamatory *per se* when they constitute "a serious charge of incapacity or misconduct in words so obviously and naturally harmful that proof of their injurious character can be dispensed with." Quilici v. Second Amendment Found., 769 F.2d 414, 417-18 (7th Cir. 1985). An action for defamation *per quod* is established "where a publication is rendered libelous by extrinsic facts or innuendo." American Needle & Novelty, Inc. v. Drew Pearson Marketing, Inc., 820 F. Supp. 1072, 1076 (N.D. Ill. 1993). "A complaint alleging a claim for defamation *per quod*, therefore, must allege both the extrinsic facts that render the publication defamatory and special damages." Id.

Whether a statement is *per se* defamatory is a question of law to be resolved by the court by applying the rule of innocent construction. Id. at 1075. Under that rule, a written statement:

> "is to be considered in context, with the words and implications therefrom given their natural and obvious meaning; if as so construed, the statement may reasonably be innocently interpreted or reasonably be interpreted as referring to someone other than the plaintiff it cannot be actionable *per se*." Id.

Here, Plaintiff does not allege that any of the statements actually made by Defendants are actually false or even about Plaintiff. Rather, Plaintiff alleges that defamation can be inferred from the statements – that is, "many express and implied statements arise from the use of the South Africa Manuscript" (¶ 42). Certainly, the use of the South Africa Manuscript "may reasonably be innocently interpreted." As a matter of law, there can be no defamation *per se* here.

In order to state a claim for defamation, therefore, Plaintiff needed to allege special damages as required for defamation *per quod*. Plaintiff failed to do so. Instead, Plaintiff merely alleged general damages, "including but not limited to reputational harm, emotional trauma, financial damage, and other damages in excess of $100,000" (¶ 119). Plaintiff includes no particulars or specifics as to how she has allegedly been damaged. And, in fact, the types of damages she alleges all fall within the type of damages that are the usual consequences of defamation.

As Wright and Miller explain, the difference between general and special damages is plain:

> "General damages typically are those elements of injury that are the proximate and foreseeable consequences of the defendant's conduct. Special damages are those elements of damages that are the natural, but not the necessary or usual, consequence of the defendant's conduct, and

> typically stem from and depend upon the particular circumstances of the case." 5A Wright & Miller, Federal Practice and Procedure § 1310 (3d ed. 2004).

Plaintiff's alleged damages – "reputational harm, emotional trauma, financial damage, and other damages" – are all the ordinary and usual type of damages foreseeable from defamation. They do not depend upon the particular circumstances of the case. See Fowler v. Curtis Publ'g Co., 182 F.2d 377, 379 (D.C. Cir. 1950) (holding that plaintiff failed to plead special damages, and affirming dismissal of libel case, where plaintiff alleged, without specificity, loss of good will, loss of business, loss of standing, and public ridicule).

Failure to plead special damages with specificity in a defamation *per quod* case as required under Federal Rule 9(g) is fatal to the complaint. In Action Repair, Inc. v. American Broadcasting Cos., 776 F.2d 143, 149-50 (7th Cir. 1985), the Seventh Circuit held that allegations that company had "suffered losses in excess of $1,000,000" failed to plead special damages as required for *per quod* defamation. "Although an estimation of final total dollar amounts lost is unnecessary, the pleadings must demonstrate some actual pecuniary loss." Id. at 150 (citation omitted). In so holding, the Seventh Circuit agreed that an allegation that a business's "good name, reputation and business had been injured in excess of $12,500,000" was "insufficient since the complaint alleged no basis for the figure, no connection between the defamatory statement and the damage, and did not specify the nature of the damage." Id. Plaintiff's failure to plead special damages renders her defamation claim fatally defective.

C. Defendants Did Not Make a False Statement About the Plaintiff.

Under Illinois law, the elements of a claim for defamation are: "(1) a defamatory assertion of fact about the plaintiff; (2) publication; and (3) injury to the plaintiff's reputation." Chisholm v. Foothill Capital Corp., 3 F. Supp. 2d 925, 938 (N.D. Ill. 1998). In paragraph 41 of

her complaint, Plaintiff lists a number of alleged statements made by Defendants on the websites. The only "statement" – if it could be called that – even arguably related to Plaintiff is the alleged affixing of a copyright notice to the South Africa Manuscript. As explained above, a claim based on this "statement" is preempted.

The remainder of the alleged statements simply relate to the websites policies, alleged revenue, and advertising. The statements relate to Defendants' (a) requiring those submitting papers to represent that they are submitting their "own papers" that "do not violate the copyrights of anyone else" (¶ 41); (b) advising those who submit papers that they are relinquishing rights to their papers; and, (c) making statements about a monthly registration fee and the inclusion advertising on the websites (¶ 41). The manner in which the websites operate have nothing to do with Plaintiff. Plaintiff's defamation claim fails as a matter of law because she has not alleged any statement or assertion of fact about the Plaintiff made by Defendants. See Chisholm, 3 F. Supp. 2d at 938 (statement must be "about the plaintiff") (emphasis added).

VII. Plaintiff's Invasion of Privacy Count Is Preempted and Fails to State a Claim.

In Count X, Plaintiff claims Defendants invaded her privacy by portraying her in a false light (¶¶ 121-126). In an attempt to provide foundation for her complaint, she speculates that the public would believe a whole host of allegedly express and implied false statements that is nothing more than hypothetical free association (¶¶ 42, 122). This claim, however, is no more than a disguised copyright claim. It claims that Plaintiff was damaged merely by having the South Africa Manuscript available on Defendants' websites in violation of her rights. For the same reasons described in Part V.A above, this claim is preempted by the Copyright Act. See 17 U.S.C. § 301(a); Toney, 406 F.3d at 909-10.

In addition, Plaintiff's speculation is insufficient as a matter of law to state a claim for false light invasion of privacy. Under Illinois law, the tort of "false light" invasion of privacy has three elements: "(1) that the plaintiff is placed in a false light before the public as a result of the defendant's actions, (2) that the false light in which the plaintiff is portrayed is highly offensive to a reasonable person, and (3) that in cases involving public figures or matters of public interest, the person giving the publicity acted with knowledge or reckless disregard of the falsity of the publicized information and the light in which the plaintiff would be portrayed." Grossman v. Smart, 807 F. Supp. 1404, 1411-12 (C.D. Ill. 1992). Though an action for invasion of privacy is recognized under Illinois law, "courts should proceed with caution in defining the limits of the right to privacy." Kelly v. Franco, 391 N.E.2d 54, 57 (Ill. App. 1st Dist. 1979). Here, Plaintiff's allegations are nothing more than speculation. Plaintiff has failed to plead any facts showing that defendants use of the manuscript could be "highly offensive to a reasonable person," an essential element of her claim. Plaintiff's false light invasion of privacy claim should be dismissed.

VIII. Plaintiff's Unjust Enrichment Claim is Preempted.

In Count XI, Plaintiff alleges that Defendants were unjustly enriched by their alleged actions. Plaintiff does not explain at all how this claim differs from her copyright infringement claim. Nor could she. Such unjust enrichment claims are routinely dismissed in these circumstances because they seek to enforce through state law a right that is exclusively defined under the Copyright Act. See ATC Distribution Group, Inc. v. Whatever It Takes Transmissions & Parts, Inc., 402 F.3d 700 (6th Cir. 2005) (unjust enrichment claim under Kentucky law preempted by federal copyright law); Briarpatch Ltd., L.P. v. Phoenix Pictures, Inc., 373 F.3d 296 (2d Cir. 2004) (unjust enrichment claim under New York law preempted by

federal copyright law), cert. denied, 125 S. Ct. 1704 (U.S. 2005); Murray Hill Publications, Inc. v. ABC Commc'ns, Inc., 264 F.3d 622 (6th Cir. 2001) (unjust enrichment claim under Michigan law preempted by federal copyright law); Del Madera Properties v. Rhodes & Gardner, Inc., 820 F.2d 973 (9th Cir. 1987) (unjust enrichment claim under California law preempted by federal copyright law); Ehat v. Tanner, 780 F.2d 876 (10th Cir. 1985) (unjust enrichment and unfair competition claims under Utah law preempted by federal copyright law). Plaintiff's claim should fare no better.

VIII. Conclusion

For the foregoing reasons, Plaintiff's Complaint against Defendants Rusty Carroll and R2C2, Inc. should be dismissed in its entirety.

Respectfully submitted,

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Certificate of Service

The undersigned hereby certifies that on October 25, 2005, a true and correct copy of the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

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